These cases are attractive and at one time inclined me to the view that the plaintiff should succeed.

Unfortunately, Mr. Wee for the defendant referred me to the decision of Mudie J. in *Seong Sam* v. *Goon Food On* [6] in which *Bridger* v. *Savage, supra,* was considered and in which the learned judge held that *Bridger's* case is only an authority where the original betting or wagering transaction was void and not illegal (as it was in the case before him).

So far as the defendant was concerned, his purchase of the ticket in the first instance from an authorized agent of the Turf Club made that purchase *legal* even though it was *void* by virtue of section 11 of the Common Gaming Houses Ordinance, 1961 and section 6 of the Civil Law Ordinance (Cap. 24). Once however the Turf Club made payment though such contracts are void — strange as this may seem — the question arises whether the plaintiff was entitled to succeed in claiming the amount collected by the defendant. On the authority of *Bridger's* case he would be so entitled if there was the relationship of principal and agent between himself and the defendant. This follows the reasoning of the learned Chief Justice in the F.M.S. case of *Lim Lian Wah* v. *Lee Ah Kiew,*[7] referred to by Mudie J. where the plaintiff paid the defendant $20 for an allotment in the name of the defendant of two numbers in the Turf Club private sweepstake. Unfortunately the plaintiff in the case before me did not pay the defendant $1 for an allotment in the defendant's name. He bought the ticket outright from the defendant and the relationship between them was not one of principal and agent but that of two principals dealing with one another on a void as well as an illegal contract. In such circumstances the Court will not lend its aid to either principal to recover from the other (see further on this the decisions in *Harry Parker, Ltd.* v. *Mason.*[8] As Lord Mansfield C.J. said in *Holman* v. *Johnson*: [9]

"The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this; *ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa,* or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault, *potior est conlitio defendentis.*

The court drives both parties from its presence: *procul este, prafani!* No judgment will be given, and no order made as to costs."

I have been unable to find authority for saying that a person can recover in similar circumstances where he is innocently and unwittingly a party to an illegal transaction not knowing that it is illegal. The passage I have cited above from Lord Mansfield C.J. certainly does not go as far as that. In fact it is silent on the question of lack of knowledge of illegality. To repeat, "if the cause of action appears to arise *ex turpi causa* or the transgression of a positive law of this country, there the court says he has no right to be assisted." All that requires to be proved before the court refuses aid to a plaintiff therefore is that the cause of action should appear to arise out of the transgression of the law. As I have found in this case the cause of action does so arise although I am satisfied that the plaintiff did not know that his purchase of the ticket transgressed the law. The fact remains that it did and ignorance of the law does not, I think, avail him. Further, the decision in *Sykes* v. *Beadon* [10] does not help him either.

It is therefore with some regret that I dismiss the claim of the plaintiff. The least that I can do is to make no order as to costs against him having regard to the nature of the case as a whole and the conduct of the defendant throughout which is that of a man who has unjustly enriched himself through an illegal transaction of which he has seen fit to take advantage. He ought to consider himself fortunate that he was not prosecuted for carrying on an unlawful lottery of his own.

Claim dismissed.

Solicitors: *N. A. Christopher; C. J. Koh & Co.*

JAG SINGH v. TOONG FONG OMNIBUS CO. LTD.

[P.C. (Lord Morris of Borth-y-Gest, Lord Hodson and Lord Guest) October 5, 1964]

[Privy Council Appeal No. 40 of 1962]

Damages — Personal injury — Leg — Amputation above knee — Considerations in making award.

Negligence — Damages — Quantum — Appeal — Considerations to be borne in mind.

Judicial Precedent — Damages — Guidance for awards in other cases.

This was an appeal in which it was sought to increase the amount of damages awarded to the appellant. The appellant at the date of the accident was a schoolboy aged seven. The motor bus which knocked him down ran over his right leg causing such severe crushing injuries as to necessitate the amputation of the leg. He was taken to hospital after the accident and was not unconscious at the time of his admission. The amputation was of the entire leg at a point just below the hip joint and the

appellant had to use an artificial leg. The trial judge held that there had been contributory negligence on the part of the appellant to the extent that damages to which he would be otherwise entitled should be halved and he awarded $7,500 as general damages. The Court of Appeal affirmed the decision of the trial judge ([1962] M.L.J. 271).

Held: (1) in deciding the appeal three considerations should be had in mind: (a) the law as to the factors which must be weighed and taken into account in assessing damages is in general the same as in England; (b) the principles governing the approach of an appellate court that is invited to hold that damages should be increased or reduced are the same as those of the law of England; and (c) to the extent to which regard should be had to the range of awards in other cases which are comparable such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions existed, but caution must be exercised when considering the awards in such cases. If the facts of those cases bore reasonable comparison with those under review some measure of uniformity might be achieved by heeding any current trend of considered judicial opinion, but that did not mean that the damages should be standardised or rigidly classified.

(2) as it had been shown that the award in the present case — $15,000, reduced by half to $7,500 on a finding of contributory negligence — was so much out of line with a discernible trend or pattern of awards in reasonably comparable cases that it must be regarded as a wholly erroneous estimate, the general damages should be increased to one half of $25,000.

Cases referred to:—

(1) *Lim Joo Chiang* v. *Lim Siew Choo and another* [1955] M.L.J. 201.

(2) *Pahang Lin Liong Motor Co. Ltd.* v. *Cheong Swee Khai* [1962] M.L.J. 29.

The following cases referred to in their Lordships' judgment have since been noted in the "Digest of Cases on Measure of Damages" at pp. lvi, lix *supra*:

(a) *Lim Jit Lee* v. *Ng Kuan* [1964] M.L.J. lix.

(b) *Hollands* v. *Ng Boon Thor* [1964] M.L.J. lix.

(c) *Ismail bin Hashim* v. *Chua Lin Chin* [1964] M.L.J. lix.

(d) *Chew See Kam* v. *Hawali bin Ahmad; Tee Soe Chee* v. *Choon Yong Leong* and *Abdul Rahman bin Haji Abdullah* v. *Abdul Rahman bin Radin Hassan & Anor.* [1964] M.L.J. lix.

(e) *Ang Lian Seng* v. *Teo Kim Geok & Anor.* [1964] M.L.J. lix.

(f) *Chiang Ah Boon* v. *The Singapore Traction Co. Ltd.* [1964] M.L.J. lix.

PRIVY COUNCIL.

Denis Murphy, Michael Mann and *T. G. Dunbar* for the appellant.

Alexander Karmel Q.C. and *Edward Grayson* for the respondents.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by,

Lord Morris of Borth-y-Gest: The sole question which is raised in this appeal is whether the damages which were awarded to the appellant ought to be increased. The appellant who is an infant brought an action, suing by his father and next friend, in which he claimed damages for personal injuries from the respondents. On the 13th November 1959 he was knocked down and injured in Kuala Lumpur by a motor-bus driven by a servant or agent of the respondents. He alleged that the accident was solely caused by the negligence of the driver of the bus. The respondents denied all allegations of negligence and contended that the accident was caused by or alternatively was substantially contributed to by negligence on the part of the appellant. The action was tried in the High Court at Kuala Lumpur by Suffian J., who, on the 6th December 1961, held that there had been negligence on the part of the driver but that the appellant had been guilty of contributory negligence to the extent that the damages to which he would otherwise have been entitled should be halved. He awarded the sum of $390 as special damages (being half of the amount claimed) and the sum of $7,500 as general damages (being half of the amount that he would have awarded had there been total liability). He made an order that the appellant should receive half his taxed costs. The appellant appealed to the Supreme Court of the Federation of Malaya and contended that the award of damages was so inordinately low as to call for increase. By leave of Suffian J. he also appealed against the order that had been made in regard to costs. The appeal was heard on the 11th and 12th April 1962 and was dismissed with costs save and except to the extent of varying the order of Suffian J. regarding costs so as to give the appellant his full taxed costs of the action. On the 15th October 1962 the Supreme Court ordered that final leave be granted to the appellant to appeal (against that part of the judgment of the Court of Appeal which related to damages) to His Majesty the Yang di-Pertuan Agong.

The appellant at the date of the accident was a schoolboy aged seven. The motor bus which knocked him down ran over his right leg causing such severe crushing injuries as to necessitate the amputation of the leg. He was taken to hospital after the accident and was not unconscious at the time of his admission. The amputation was of the entire leg at a point just below the hip joint. At the time of the trial the appellant (then a schoolboy aged nine) was able to walk with an artificial leg which he had some time before. In his judgment the learned judge said:—

"In attempting to place the plaintiff in so far as can be done by money in the same position as he would have been in but for the negligence of the defendant's driver, I am seriously handicapped by the fact that at the time of the accident the plaintiff was only seven years of age and was not a working man earning money. His injuries were serious, his pain and suffering excruciating. Because of the amputation his mobility has been seriously affected, but not his mental capacity and if he does well at school there is nothing to stop him from earning a living in a sedentary occupation or even from achieving eminence in the professions or politics. Nevertheless I take into account the probability that he might not have the mental

equipment necessary for these positions, in which event his lack of mobility would be a serious handicap to his future livelihood. Considering all these factors and considering the social class to which the plaintiff belongs (his father is a watchman who sends two of his sons to an English school) and giving this matter the best consideration I can in the circumstances, I award $7,500 general damages, that is, half the damages I would have awarded for 100 per cent liability."

In appeals comparable in nature to the present one it must be recognised, as was said by Lord Somervell in *Lim Joo Chiang* v. *Lim Siew Choo and another*,[1] that the burden on an appellant who invites interference with a figure that has commended itself to two courts is indeed a heavy one. In deciding this appeal their Lordships think that three considerations may be had in mind: (1) That the law as to the factors which must be weighed and taken into account in assessing damages is in general the same as the law in England. (2) That the principles governing and defining the approach of an appellate court that is invited to hold that damages should be increased or reduced are the same as those of the law in England. (3) That to the extent to which regard should be had to the range of awards in other cases which are comparable such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social economic and industrial conditions exist.

It need hardly be emphasised that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before any comparison between the awards in the respective cases can fairly or profitably be made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardised or that there should be any attempt at rigid classification. It is but to recognise that since in a court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion. As far as possible it is desirable that two litigants whose claims correspond should receive similar treatment just as it is desirable that they should both receive fair treatment. Those whom they sue are no less entitled.

In considering the amount of the award made by the learned judge in the present case the Court of Appeal referred to a previous decision of the court in *Pahang Lin Siong Motor Co. Ltd.* v. *Cheong Swee Khai*.[2] In that case (where a right arm had been lost) it was said that such local cases as were reported were so few in number and so diverse in their conclusions that they did not afford any very reliable guidance. In the present case all the members of the Court of Appeal thought that the figure of $15,000 was too low. The learned Chief Justice (Thomson C.J.), with whose judgment Hill J.A. agreed, thought that had he been trying the case he would have assessed the damages at a figure in the neighbourhood of $18,000 but certainly at less than $20,000. The learned Chief Justice thought that his figure would be in keeping with what had been previously said in the Court of Appeal adding "particularly when it is remembered that in the present case there was nothing to suggest that the injured boy had in fact suffered or would necessarily suffer any diminution of earning capacity by reason of his injury". This seems to involve a departure from the view expressed by the learned judge at the trial. Good J.A. felt sure that he would have awarded more than $15,000 but not a great deal more. The Court of Appeal were referred by counsel to three comparable though unreported cases*, two of which were decided in Singapore. All three were cases of amputations of a leg above the knee. The Singapore cases related respectively to a schoolboy aged eighteen[a] and to a soldier aged twenty-four.[b] The third case related to a schoolboy aged eighteen.[c] No specific reference to these cases was made in the judgments in the Court of Appeal. Before their Lordships' Board there was a much ampler reference to other cases. Three additional cases were cases where there had been amputations below the knee.[d] A further additional case related to a schoolboy aged twelve whose leg had been amputated above the knee and who had been awarded damages in Singapore.[e] Another case related to a man aged forty-two who had sustained leg injuries which rendered it useless.[f] Those were all cases that had been decided before 1962. Reference was also made to two other cases relating to serious leg injuries. Very many other cases were referred to where damages had been awarded for injuries which resulted in leg shortening. Their Lordships do not think that any useful purpose would be served by referring in any detail to these cases nor to record the various individual awards. The cases must be considered with that full measure of caution to which their Lordships have referred. It was urged also that awards may have been influenced in some cases by comparisons with awards made elsewhere than in Malaysia and that such comparisons were unprofitable. Giving due

*These cases have since been noted in the "Digest of Cases on Measure of Damages" [1964] M.L.J. lvii at lix.

weight to all these considerations their Lordships are of the opinion that it is shown that the award in the present case was so much out of line with a discernable trend or pattern of awards in reasonably comparable cases that it must be regarded as having been a wholly erroneous estimate. Their Lordships consider that by way of general damages the appellant should have been awarded one half of $25,000. Their Lordships will therefore report to the Head of Malaysia their opinion that the appeal should be allowed and that the amount of general damages be increased from $7,500 to $12,500 and that the respondents should pay the costs of the appellant in the Court of Appeal and before their Lordships' Board.

Appeal allowed.

Solicitors: *Le Brasseur & Oakley; Lipton & Jefferies.*